

GARY L. JOHNSON [4353]
ZACHARY E. PETERSON [8502]
RICHARDS, BRANDT, MILLER & NELSON
50 South Main Street, #700
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

JOHN B. DAUKAS [admitted pro hac vice]
GOODWIN PROCTER LLP
Exchange Place
Boston, MA 02109
Telephone: (617) 570-1000
Fax No.: (617) 523-1231
Attorneys for Defendant Cooley, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

COVERSTAR, INC., a Utah corporation,

Plaintiff,

vs.

COOLEY, INC., a Rhode Island corporation;
and COOLEY ENGINEERED
MEMBRANES, INC., a Rhode Island
corporation,

Defendants.

**DEFENDANTS' AMENDED MOTION
TO STRIKE PLAINTIFF'S NEW
TESTIMONY AND NEW EXHIBITS
TO ITS RULE 59(e) MOTION**

Civil No. 2: 01 CV-0663 S

Defendants Cooley, Inc., a Rhode Island corporation, and Cooley Engineered Membranes, Inc., a Rhode Island corporation (hereinafter "Cooley"), by and through its counsel, Gary L. Johnson and Zachary E. Peterson of the law firm RICHARDS, BRANDT, MILLER & NELSON and John B. Daukas of the law firm GOODWIN PROCTER, submits this Amended Motion to Strike Plaintiff's references to new testimony and exhibits to its Rule 59(e) Motion.

Pursuant to Fed. R. Civ. P. 59 and Fed. R. App. P. 10 and because the evidence was not timely or properly raised prior to the Court's Order granting Cooley summary judgment, Cooley requests this Court to Strike Coverstar's deposition testimony and the new evidence set forth below:

- Coverstar's First Request for Production of Documents (referenced in footnote 8 on pp. 12-13 of Coverstar's Reply Memorandum);
- 3 page spreadsheet attached as part of Ex. B to Coverstar's Reply Memorandum (pp. 7, 8, and 9 of 11), which is not part of Exs. 17, 18, 23, or 30 (referenced at p. 13 of Coverstar's Reply Memorandum);
- E-mail from Dr. Charles Schmid to Brad Hochberger, dated May 1, 1998, deposition exhibit 154 (referenced in footnote 10, p. 15 of Coverstar's Reply Memorandum);
- Deposition testimony of Callahan, Slavens, St. Clair, Haws, Ackerman, M. Smith, Thompson, Rogers and Millward which has not previously been attached as exhibits to either parties' submissions to the Court (referenced in footnote 11 at p. 16 of Coverstar's Reply Memorandum);
- Deposition testimony of Dr. Charles Schmid (referenced at pp. 16-17 of Coverstar's Reply Memorandum);
- Deposition testimony of Dr. Willard (referenced in footnote 12 at pp. 17-18 of Coverstar's Reply Memorandum) (with the exception of pp. 1, 7-9 which was timely attached as Ex. W to Coverstar's Opposition Memorandum (Docket Entry #141));

- Deposition testimony of Dr. William Brittain (referenced in footnote 12 at pp. 17-18 of Coverstar's Reply Memorandum);
- Expert Report of Dr. William Brittain, deposition exhibit 381 (referenced at p. 18 of Coverstar's Reply Memorandum);
- Expert Report of Dr. Fred Willard, deposition exhibit 357 (referenced at p. 19 and footnote 14 of Coverstar's Reply Memorandum).

Because Coverstar has failed to timely raise or assert any of the above referenced evidence, it should not be part of the record on appeal. Accordingly, Cooley requests an Order from this Court striking Coverstar's Addendum to its Rule 59(e) Motion and also striking all of the above referenced evidence, testimony and exhibits and also those parts of Coverstar's Reply Memorandum which reference this evidence.

DATED this 26th day of July, 2006.

RICHARDS, BRANDT, MILLER & NELSON

/s/ Zachary E. Peterson
GARY L. JOHNSON
ZACHARY E. PETERSON
Attorneys for Defendants Cooley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 26, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Evan A. Schmutz, Esq.
Wm. Kelly Nash, Esq.
Hill, Johnson & Schmutz
Jamestown Square
3319 North University Ave. Ste. 200
Provo, UT 84604
Attorneys for Plaintiff

/s/ Zachary E. Peterson

G:\EDSI\DOCS\15297\0001\HV5031.WPD